

PREVENTING FINANCIAL EXPLOITATION OF THE ELDERLY



A Notary's
Guide to
Protecting
Vulnerable
Seniors

FINANCIAL ABUSE OF THE ELDERLY IS ONE OF THE FASTEST GROWING CRIMES IN THE COUNTRY

- **Costs over \$2.6 billion per year**
- **Leaves millions of elderly destitute annually**
- **Generally involves**
 - Family or Caregivers
 - Utilizes legal documents to steal assets

ELDER FINANCIAL ABUSE AND EXPLOITATION

- Occurs in every community
- Among all social strata
- Is:
 - ✓ Under-recognized
 - ✓ Under-reported
 - ✓ Under-prosecuted

A
DIFFERENCE
WITHOUT
A
DISTINCTION

ELDER FINANCIAL
EXPLOITATION

or

ELDER FINANCIAL
ABUSE

ELDER FINANCIAL EXPLOITATION / ABUSE

A
DIFFERENCE
WITHOUT
A
DISTINCTION

The fraudulent or otherwise
illegal, unauthorized, or
improper act or process of
an individual that uses the
resources of an older
individual for monetary or
personal profit or gain.



PREVENT



PROTECT



PROVE

PREVENTION



The Notary
is the

First Line of Defense...

STOP IT BEFORE IT STARTS

Your job is NOT just to identify the signers...

You have to *make sure* that your elderly signers are *“knowingly and willingly”* signing the documents you have been asked to notarize.

FIRST - BE PREPARED!

General Background Knowledge:

- What types of documents most likely involved in exploitation
- What specific situational issues to be aware of
- What you as a notary public can/can't - should/shouldn't do

DANGEROUS DOCUMENTS

1. POWERS OF ATTORNEY:

- **General** - Grants broad authority over principal's affairs
- **Limited** - Specifies the actions the agent may take
- **Durable** - Lasts even if principal is incapacitated
- **Medical** - Covers only medical care and issue

2. PROPERTY DEEDS & TITLES:

- **Quit Claim Deed** - Transfers ownership without loan
- **Deed of Trust** - Transfers ownership in concert with a mortgage loan
- **Titles** - Transfers ownership of personal property

PRECARIOUS SITUATIONS

- ❑ **General mental condition of elderly signer**
 - ❑ Any diagnosis of dementia, Alzheimer's
- ❑ **Current medications**
 - ❑ Specifically narcotics or opiates
- ❑ **What else may be going on...**
 - ❑ Family issues, other health issues

WARNING SIGNS

- Lethargic, tired, sleepy
- Confused or disoriented
- Lack of enthusiasm
- Lack of interest
- Unwilling to converse about general subjects
- Any verbal cues that signer is uncomfortable
- Pressure by other parties
 - Too much enthusiasm
 - Emphasis on how important it is to sign now
 - “Pushiness”

MANAGE THE SITUATION!

As the notary, it is your job to control the signing ceremony:

- Who is in attendance
- Who speaks - who doesn't
- What is done - what isn't
- When the notarization takes place
- How much time it takes

CONTROL THE SETTING

**Ideally, the only people
in the room/area should be:**

- 1. The Notary**
- 2. The Signer**
- 3. Optional** - additional “witnesses” -
if required

CONTROL THE PROCEDURE

1. General conversation
 - a. Inquiry about signer's general health
 - b. Something about the weather
 - c. Question about current events
2. Why are you here today?
 - a. What are you signing?
 - b. What does this document do?
 - c. Is this replacing a current document?
3. Assure signer that they may refuse to sign or may interrupt/stop at any time

TIPS

- ❑ Use open-ended questions
- ❑ Give the person plenty of time to visit, answer questions - **DO NOT RUSH!!!!**
- ❑ Allow the conversation to wander
- ❑ Be sensitive to privacy concerns
- ❑ Be reassuring if signer is concerned about not doing what someone told him/her to do

CONTROL THE OUTCOME

1. Determine if you can legitimately perform the notarization
 - a. Can you properly identify the signer as the person who is supposed to sign the document?
 - b. Can you determine the type of notarial act you should do?
2. Using the standard of **REASONABLE CARE**
 - a. Does the signer understand what the document is?
 - b. Does the signer understand what the transaction will do?

If you answered **YES** to all of the above
- **Notarize the document.**

IF THE ANSWER IS “NO”

☐ Explain why you are refusing

- ☐ Because of deficiencies in document
- ☐ Because of identification issues
- ☐ Because of concerns about signer's understanding and/or intent

☐ Offer to set up a later appointment

- ☐ Explain what additional information is needed
- ☐ Suggest more appropriate time

☐ Then what???

- ☐ Say something
- ☐ Do something

PROTECTION



The Notary
is the

Safety net...

WHEN SIGNER IS USING A POA

- ❑ Verify the agent's identity, capacity, and authority
 - ❑ Inquire if the Principal is still alive
 - ❑ Ask to see the original or certified copy of the POA
 - ❑ Review the POA to make sure that it covers the type of document presented
 - ❑ Ask if the agent knows if the POA has been revoked or modified
 - ❑ Carefully verify the agent's identity
- ❑ Be cautious - if not suspicious - of
 - ❑ Large amounts of money
 - ❑ Property transfers
 - ❑ Frequent transactions
 - ❑ Unusual requests
 - ❑ Nervous or defensive behavior of representative

HANDLING “REP-CAP” SIGNINGS

- ❑ Take control
 - ❑ Be sure you understand what is going on
 - ❑ Don't be pressured to do something if you aren't comfortable
 - ❑ Call for help if needed
 - ❑ The SOS office
 - ❑ The NNA Hotline
 - ❑ Notary Supervisor/Mentor
- ❑ Take your time
 - ❑ Complete the notarial block properly
 - ❑ Complete your journal accurately

PROOF



The Notary
creates
the

Official Record of the
Transaction

YOUR JOURNAL RECORD

- ❑ Provides the details of notarization
 - ❑ When the notarization was performed
 - ❑ What type of document was notarized
 - ❑ The date of the document
 - ❑ What type of notarization was performed
 - ❑ Who signed the document, including their signature in the journal
 - ❑ How the signer was identified
 - ❑ Other relevant information*
- ❑ Is considered *prima facie* evidence in court

“RELEVANT INFORMATION”

When performing a notarization for an elderly signer:

- ✓ Note the amount of time you spent with the person
- ✓ Note some of the questions you asked and the answers provided (briefly)
- ✓ Indicate who requested the service or who brought the person to you
- ✓ Anything else you think is important to memorialize about the interaction

“RELEVANT INFORMATION”

When performing a notarization for someone signing in a representative capacity:

- ✓ Indicate that you verified capacity and authority by reviewing the enabling document
- ✓ Note whether you saw an original or certified copy of enabling document
- ✓ Include anything else you think is important to memorialize about the interaction

Your notary journal is the official record of what occurred - use it to memorialize those details that may be helpful in confirming:

- **That the notarization was performed properly**
- **That the signer was identified as the person who was authorized to sign the document**
- **That the signer knowingly and willingly signed the document**

MONTANA'S NOTARIES PUBLIC...

...A vital
resource for
combating
elder
financial
exploitation

